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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,562	09/24/2004	Eric Veine	LC 0173 PUS	5561

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EXAMINER

NELSON JR, MILTON

ART UNIT PAPER NUMBER

3636

DATE MAILED: 12/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/711,562

Applicant(s)

VEINE ET AL.

Examiner

Milton Nelson, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-14, 17-19 is/are rejected.
- 7) ☒ Claim(s) 11, 15, 16 and 20 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 September 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "42" and "62". A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "48" has been used to separate elements in Figure 3. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

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applicant regards as the invention. In claim 1, it is unclear if Applicant intends to positively claim the combination of a head restraint assembly and a seat back of an automotive seat assembly or the subcombination of a head restraint assembly for use with an automotive seat assembly having a seatback. Lines 1-2 appear to set forth the subcombination. Note the recitation of an "automotive head restraint assembly for use in an automotive seat assembly having a seatback". Lines 5-6 appear to set forth the combination. Note the recitation of the arm of the head restraint assembly "generally perpendicular to the seatback plane". Clarification in the claim language is required. Line 3 of claim 2 is grammatically vague. Note the recitation "a pair of horizontal travel arm". In claim 4, it is unclear how movement is realized when the "locking arm is in said locking arm engagement position". Such appears to contradict claim 3, from which claim 4 depends. The remaining claims are indefinite since each depends from an indefinite claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(c) he has abandoned the invention.

(d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

(f) he did not himself invent the subject matter sought to be patented.

(g)(1) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such person's invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or

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(2) before such person's invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

Claim 1, as best understood with the above cited indefiniteness, is rejected under 35 U.S.C. 102(b) as being anticipated by Lycan (2666476). Note the head restraint support member (18, 22), horizontal travel arm (22), head restraint inner structure (28, which has a portion that is inner to block 22).

Claims 1 and 8, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 102(b) as being anticipated by Wooten (4205878). Note the head restraint support member (20), horizontal travel arm (22), head restraint inner structure (frame structure inside of 40), and travel channel (40).

Claims 1, 3, 4, 8 and 9, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 102(b) as being anticipated by Inasawa et al (4191422). Note the head restraint support member (1, 2), horizontal travel arm (2, note either the longitudinal extension or the transverse extension, each of which extends perpendicularly to the vertical seat plane of the seatback), head restraint inner structure (3), notches (2b, 2b'), locking arm (4), travel channel (3b, 3c'), locking blade (4c), and guide channel (3c).

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Claims 10 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Inasawa et al (4191422). Note the seatback (see line 58 of column 1), head restraint support member (1, 2), vertical extension (one of the vertical legs of 1), horizontal travel arm (2, note either the longitudinal extension or the transverse extension, each of which extends perpendicularly to the vertical seat plane of the seatback), head restraint inner structure (3), travel channel (represented by 3a; it can be seen in Figures 3 and 4 that the inner corner of the "L" shape forms a channel), notches (2b, 2b'), locking arm (4), gearing assembly (4e) and associated notches (2c).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Inasawa et al (4191422).

The primary reference shows all claimed features of the instant invention with the exception of the specifically claimed method of providing steps. Note the previous descriptions of this reference.

It would have been obvious, if not inherent, to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference by

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providing it's structure in the specifically claimed method of providing steps. This provides an efficient and safe manner for enhancing selective user comfort and support.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wooten (4205878).

The primary reference shows all claimed features of the instant invention with the exception of the specifically claimed method of providing steps. Note the previous descriptions of this reference.

It would have been obvious, if not inherent, to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference by providing it's structure in the specifically claimed method of providing steps. This provides an efficient and safe manner for enhancing selective user comfort and support.

Allowable Subject Matter

Claims 2, and 5-7 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 11, 15, 16 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

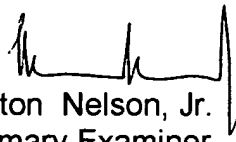
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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. A horizontally adjustable head restraint assembly is shown by each of O'Sullivan et al (4856848), Katz (1471168), Su (6616236), Heesch et al (4657304), Holstensson (6533359), Meiller (5080436), Asai (4278291), and Denton (4762367).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milton Nelson, Jr. whose telephone number is 7033082117. The examiner can normally be reached on Monday-Friday 5:30-3:00.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Milton Nelson, Jr.
Primary Examiner
Art Unit 3636

mn
December 13, 2004